

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 5/19/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Kathleen I. Johnson requesting to sell all stock of the Arrowhead Manor Water Company, Inc. and Rio Plaza Water Company, Inc. requesting to buy all stock in this water system located in Cedar Glen, San Bernardino County, California.

Application 03-04-032
(Filed April 25, 2003)

**OPINION GRANTING MOTION TO DISMISS
THIS APPLICATION WITHOUT PREJUDICE TO REFILE**

1. Summary

Arrowhead Manor Water Company, Inc. (Arrowhead), a privately owned water utility in Cedar Glen, California, serving approximately 500 customers, filed this application on April 25, 2003, seeking to sell and transfer ownership of the company to Rio Plaza Water Company, Inc. The Commission's Water Division now moves for dismissal of the application on grounds that Arrowhead is in receivership, with disposition of its assets subject to the direction of the San Bernardino County Superior Court. The motion to dismiss is granted, without prejudice to refiling if circumstances so warrant.

2. Background

The Commission in Decision (D.) 02-07-009 on July 17, 2002, directed staff to petition the Superior Court for appointment of a receiver for Arrowhead. The order followed a showing by the Water Division that the utility was not

adequately serving its customers, had essentially abandoned the water system, and had disregarded Commission regulations and orders.

Commission staff petitioned the Superior Court for appointment of a receiver on January 4, 2003, and the court granted the petition on May 7, 2003. John W. Richardson was named receiver for Arrowhead and was given authority to operate the utility, prepare the property for sale, and solicit bids for the transfer of ownership.

Arrowhead on April 25, 2003, filed this application seeking Commission authority to sell and transfer ownership of the company to Rio Plaza Water Company, Inc. The application was opposed by Commission staff, which noted that the property was subject to receivership proceedings in the Superior Court.

The assigned Administrative Law Judge (ALJ) on June 17, 2003, conducted a telephone status conference with the parties. By ALJ Ruling on June 20, 2003, Arrowhead was directed to confer with the court-appointed receiver and, among other things, to take the following action:

The Receiver will be invited to join in filing an amendment to the application in a manner that would make the Receiver responsible for going forward with this application if and when the Receiver determines that such action is appropriate. (ALJ Ruling, at 1.)

On October 24, 2003, Receiver Richardson notified the Commission that he could not support or sponsor Arrowhead's application. He stated that the Superior Court had directed him to prepare the water company for sale and to solicit offers from all prospective buyers, including but not limited to Rio Plaza Water Company, Inc.

In a report to the Superior Court for the period January 1—March 31, 2004, the receiver stated that he had prepared the Arrowhead property for sale, pursued various insurance claims, and released a request for qualifications (RFQ)

to all parties that had an interest in acquiring the company. The time for response to the RFQ has been extended to mid-year 2004.

3. Discussion

It is clear that this application by Arrowhead is premature, in that preparation for sale and transfer of ownership of this small water utility is in the hands of the receiver, subject to the direction and approval of the San Bernardino County Superior Court. Accordingly, we will dismiss the application and close this proceeding. We do so without prejudice to refiling should the parties deem that appropriate. Before the property ultimately is transferred, the new owner will require the approval of this Commission and of the Department of Health Services in proceeding with public utility service.

In Resolution ALJ 176-3112 dated May 8, 2003, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that no hearings would be necessary. Our examination of the record persuades us that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations.

4. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Applicant filed comments opposing dismissal of the application and stating that its opposition to the motion, through inadvertence, was not filed with the Commission. Applicant asserts that keeping the application active may assist in the sale of stock and transfer of ownership. On the contrary, we believe that closing this application for a specific sale to Rio Plaza Water Company will enable applicant, the receiver and the Superior Court to move ahead in preparing the property for sale, without the distraction of a pending application before this

Commission. When the receiver reports to the Superior Court that a prospective buyer has been identified, and when the court indicates its approval of a sales plan, applicant can refile with the Commission its application for sale and transfer of control, noting at that time that the obligations of the receivership have been fulfilled.

5. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner, and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission in D.02-07-009 directed staff to petition the San Bernardino County Superior Court for appointment of a receiver for Arrowhead.
2. The Superior Court granted the petition and appointed a receiver for Arrowhead on May 7, 2003.
3. Arrowhead filed this application on April 25, 2003, seeking to sell and transfer ownership of the company to Rio Plaza Water Company, Inc.
4. Arrowhead on June 20, 2003, was directed to invite the receiver to join in its application.
5. The receiver on October 24, 2003, declined to support or sponsor Arrowhead's application.
6. The Commission's Water Division on March 22, 2004, moved for dismissal of this application.

Conclusions of Law

1. Arrowhead's application is premature because preparation for sale and transfer of ownership of the company is in the hands of the receiver.
2. The motion to dismiss the application should be granted, without prejudice to refile should events so warrant.

O R D E R

IT IS ORDERED that:

1. The motion of the Commission's Water Division to dismiss Application (A.) 03-04-032 is granted, without prejudice to refiling.
2. A.03-04-032 is closed.

This order is effective today.

Dated _____, at San Francisco, California.